



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 20, 2023

IN THE MATTER OF:

Appeal Board No. 626320

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected, contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed October 05, 2022 (), the Administrative Law Judge overruled the initial determination and sustained the employer's objection, effective September 28, 2021.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant contends that he did not appear at the adjourned hearing held on October 3, 2022, because he was hospitalized. We have determined that he should have another opportunity to present testimony and evidence in this matter, as well as cross-examine the testimony given on behalf of the employer at the prior proceedings and raise objections to evidence entered at the adjourned hearing. The claimant also is hereby placed on notice that the judge will consider whether the circumstances under which he allegedly was absent on September 24, 2021 constitute misconduct for unemployment insurance purposes.

At the remand hearing, the claimant shall be provided with a French language translator, who shall translate the testimony provided by Gladys Rork at the September 14, 2022 hearing, as well as all of the testimony provided on the employer's behalf at the October 3, 2022 hearing. To that end, the employer is directed to produce Ms. Cannon and Ms. Rork at the remand hearing. The documents entered into evidence as Exhibits 4 and 5 at the October 3, 2022 hearing also should be translated for the claimant, who shall be given an opportunity to raise any objections that he might have to either document.

The claimant then shall testify about the circumstances under which he was separated from this employment. The employer should produce the attendance policy allegedly violated by the claimant at the remand hearing, which shall be entered into evidence after translation and the appropriate confrontation. Both parties shall be questioned about how the claimant was made aware of the policy. The employer is directed to ensure that copies of the policy are provided to both the claimant and the Hearing Section prior to the remand hearing.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER